

Interview Summary

The Examiner granted the Applicant a telephone interview on April 1, 2008. During that interview, the Applicant requested clarification of the 35 USC § 101 rejection of claim 17 and the 35 USC § 102 rejection of claim 1. With regard to the limitation to claim 1 that "the reminder is a reminder to contact the bereaved", the Examiner explained that this limitation was given no weight because it constituted printed matter. With regard to the requirement that the offer be made to persons "selected based on their attendance", the Examiner seemed to say that this limitation was not given any weight either. With regard to whether the rejection was based on a "virtual funeral service" or an actual funeral service such as described in the citation to pars. [0190]-[0192] in the reference, the Examiner asserted that the rejection was based on a "virtual funeral service." The Examiner professed to having no idea why pars. [0190]-[0192] were cited in the rejection. The Applicant asked how the Examiner was interpreting the term "funeral service" and what was meant by a "virtual funeral service." The Examiner responded that virtual funeral services are well known in the art and suggested that Applicant make a written request for the definition relied on in making the rejection. The Examiner further asserted that virtual funeral services have been described in prior art patent publications.

REMARKS/ARGUMENT

It is unclear which funeral service is relied on in rejecting claims 1-2, 4-6, 8-12, and 24-29

The Office action is ambiguous and unclear as to the funeral service relied on in forming this rejection. On the one hand, the rejection cites pars. 190-192 of Russell et al. titled "What Can Mourners Expect at the Visitation, Funeral and/or Memorial Service?" which provides sample content for Russell et al.'s website, the content including a description of an actual Roman Catholic service. See Office action page 3.

On the other hand, the rejection cites a "virtual funeral service". See, e.g., "Regarding to claim 8" on page 4 and "Response to Arguments" on page 9.

If alternate grounds of rejection are being given, the Office action is further unclear as to how these separate grounds are met with respect to other claim elements. For example, claim 1 requires a group of persons to attend the funeral service. Where and how attendance is found for a virtual funeral service or an actual service not held in a funeral home is not explained. Claim 1 also requires an offer be made to persons selected based on their attendance. How this element is met is not described for either case and would need to be evaluated differently depending on the type of service intended by the rejection. The Applicant suggests that if two separate grounds are maintained that the best way to make the grounds clear would be to state the two grounds separately.

The definition of "funeral service" as used in the rejection is required

The Office action creates doubt as to how the Examiner has interpreted the term "funeral service". Clarification of how the Examiner has interpreted the claim term "funeral service" is required to understand the Examiner's position. The word "service" by itself has several dictionary meanings. In rejecting the Applicant's contention that Russell et al does not teach or suggest providing a funeral service, the Examiner states: "These services [provided by Russell et al.] include the death notice, the obituary, service information, wishes and donation information, distribution, guest book and acknowledgment" See Office action page 9. This explanation suggests the Examiner considers a funeral service to be any service offered in connection with a funeral. On the other hand, the usual meaning of "service" in the phrase "funeral service" is "a ritual or form prescribed for public worship or for some particular occasion." Clarification is required to know whether the Examiner has departed from this usual meaning.

The definition used by the Examiner is further confounded by use of the modifier "virtual" and references to a "virtual funeral service." This usage suggests that the

Examiner does not mean any service offered in connection with a funeral, such as distributing death notices, but rather means a "funeral service" as the term is usually meant, but attended by some electronic means such as video conferencing. Whatever the case, the Applicant is left guessing as to the thrust of the rejection. Clarification is required before Applicant can logically respond.

It is unclear what portion of Russell et al. is alleged to describe a "virtual funeral service"

Connected with the need for clarification regarding the Examiner's interpretation of the claim term "funeral service", but possibly raising other issues, it is also unclear the sense in which Russell et al. is alleged to describe a funeral service. The Office action provides a laundry list of services, but it is unclear how they cooperate to form a "virtual funeral service". The question was further confounded by the interview in which the Examiner suggested reliance was being placed on the understanding of one of ordinary skill in the art that funeral services could be offered virtually. If the rejection relies on an assumption of facts considered to be well known in the art, those facts must be stated for the grounds of rejection to be clear.

It is unclear what part of Russell et al. is alleged to meet the claim limitation "selected based on their attendance of that service"

It cannot be determined from the Office action how the claim limitation "selected based on their attendance" is alleged to be met by the reference. With regard to this limitation, the Office action cites making tribute cards available on the URL and providing a guest book on Russell et al.'s website. See pages 3 and 10. The Office action does not address how providing a guest book or making tribute cards available on a URL constitute making an offer to persons selected based on their attendance at a funeral service. The Examiner's reasoning behind the treatment of this limitation is neither provided in or self-evident from the Office action.

The meaning of the phrase "(. . . tribute cards are available on URL with a message included either type of offering such as Anniversary reminder; see page 17, par 0221 and page 18, par. 0229) is unclear

This phrase is used on page 3 of the Office action. While the use of sentence fragments and the presence of grammatical errors do not *per se* make a remark incomprehensible, in this particular case the Examiner's meaning is objectively unclear. The cited text does not clarify the basis for rejection but rather raises additional questions for the Applicant as to what arguments the Examiner is making.

The Examiner's position regarding Russell et al.'s disclosure of a "reminder to contact the bereaved" is unclear

The Office action asserts that Russell et al. discloses a method comprising offering persons selected based on their attendance at a funeral service an election to receive a funeral anniversary reminder, wherein the funeral anniversary reminder is a reminder to contact the bereaved. In explaining where the underlined material is disclosed in Russell et al., the Examiner cites Russell et al.'s provisions for mourners to view death notices and initiate an appropriate response. Appropriate responses identified by the Examiner and found in the citation to Russell et al. include acknowledgements and memorial cards. The Examiner adds reminders to this list. Several essential elements of the Examiner's position are left unclear.

First, in what sense is Russell et al. alleged to suggest contacting the bereaved on the occasion of a funeral anniversary? The triggering event described in the rejection is the death notice. Does the Examiner contend the death notice is posted on a funeral anniversary? Does the Examiner contend that posting a memorial card on the website constitutes contacting the bereaved? Is the Examiner declining to contend that Russell et al. discloses an anniversary reminder to contact the bereaved, but instead contending that the claim is not limited by the required content of the reminder, as suggested during the Examiner interview, and that the limitation is met by the recitation

of a generic reminder in Russell et al.? The Office action leaves the Examiner's position unclear in these several respects.

The Applicant further notes that the Examiner states "Russell teaches the tribute cards with customized offerings to mourners include Anniversary Reminders through a specific tribute website." Office action page 9. This does not clarify the Examiner's position. Russell et al. does not seem to describe including, nor is it clear what it would mean to include, an anniversary reminder within a tribute card. It is further unclear how including an anniversary reminder in a tribute card would make the reminder a reminder to contact the bereaved. Clarification is required to understand the rejection.

The basis on which the Examiner contends Russell et al. provides guidelines for whether to contact the bereaved on a funeral anniversary is unclear

Claims 5 and 12 require that the reminder include "guidelines for whether to contact the bereaved in regard to the anniversary." The rejection cites Russell et al.'s disclosure of providing information about topics related to the death of loved ones. In responding to the first Office action, the Applicant explained that guidelines for whether to contact the bereaved in regard to the anniversary were not present in the art prior to Applicants work. The Examiner did not address this contention, but merely repeated the rejection. Some explanation of the Examiner's reasoning for not being persuaded is required. In particular, does the Office contend that guidelines for whether to contact the bereaved in regard to the anniversary were known in the art, or does the Office contend that content of the reminder does not create a patentable distinction (as suggested during the interview). It is also unclear whether the Examiner considers the claim limitation is met by the guidelines being present on the website or whether the Examiner contends that Russell et al. suggests sending guidelines to a recipient as part of a requested anniversary reminder.

It is unclear what the Examiner considers to be appropriately marking a funeral register

Claim 8 requires that the attendees elect to receive the reminder by appropriately marking a funeral register. The rejection mentions that the website includes a guest book and offers an anniversary reminder service. The Office action leaves unclear what the Examiner considers to be a funeral register and what the Examiner considers to constitute marking that register. Does the examiner contend that the website guest book is a funeral register or that the entire website is a funeral register? How is the examiner interpreting the claim term "funeral register"? Does the Examiner assume that the anniversary reminder option is placed on the guest book page? Has the Examiner assumed a specific way in which the invention of Russell et al. could be implemented or might be implemented in forming the rejection?

It is unclear whether the Examiner considers placing a death notice in a newspaper to be advertising a funeral business and what business the Examiner believes would be advertised by such a notice

Claim 9 is for a method of advertising a funeral business. The rejection begins by stating "(...death notices placed in newspapers by the site require more advertising space par. 0111-0112)". Office action page 4. First, it is unclear why the examiner considers the requirement for more advertising space to be relevant. Is the Examiner's point that the use of advertising space is per se advertising? If so, for purposes of the rejection, which business does the Examiner contend is being advertised, that of the website or that of a funeral home? Has the Examiner made assumptions about the content of the death notice, e.g., assuming it contains the business name for the website?

The grounds on which the Examiner contends that members of the list are provided with a reminder is unclear

Claim 9 requires obtaining a list of funeral or memorial service attendees a reminder that a funeral anniversary date is approaching. With regard to the list, the Examiner cites a portion of Russell et al. wherein a count of persons attending a wake or funeral arranged by a funeral director is obtained. With regard to the reminder, the rejection cites the MyEtribute.com website ability to provide users of upcoming events. The rejection is unclear and incomplete in that it does not explain the Examiner's basis for contending users of the website are members of the list of attendees.

It is unclear whether the Examiner contends claim 9 is anticipated by posting death notices

It is unclear whether claim 9 was rejected based on Russell et al.'s description of posting death notices, Russell et al.'s providing a facility for website users to be reminded of upcoming events, or by either act. With respect the pre-amble, the rejection cites posting death notices. Within respect to claim elements in the body, the rejection says no more about death notices but cites providing users with reminders of upcoming events. The rejection does not provide any bridge between these seemingly unrelated elements of Russell et al, such as an assertion that a death notice is an upcoming event or a claim that it is usual to advertise funeral anniversaries like deaths. It is unclear whether two separate grounds are being given, whether the citation to death notices is spurious, or whether the Examiner sees a connection between posting death notices and reminding website users of upcoming funeral anniversaries. Does the Examiner consider posting a death notice as described by Russell et al. an anticipating act?

The Examiner's reasoning behind rejecting of claim 15 is unclear

Claim 15 specifies that "the reminder includes a brochure that explains potential benefits of contacting a bereaved person regarding the funeral anniversary." The

rejection merely quotes the claim language and adds the parenthetical “(...paper sympathy, announcement, acknowledgement or tribute cards or programs; page 17, par. 0221-0222). It is unclear how the Examiner relates the quoted language to a brochure explaining the potential benefits of contacting a bereaved person regarding a funeral anniversary. Was this intended to be an obviousness rejection? It is also unclear how the Examiner has responded to the Applicant’s arguments that suggesting to funeral attendees contact the bereaved on a funeral anniversary was unknown in the art prior to Applicants work.

The Examiner’s reasoning behind rejecting of claim 17 is unclear

With regard to the rejection of claim 17, it is unclear what the Examiner considers to be the funeral register. The rejection includes a reference to tributes, the import of which is unclear.

It is unclear how the claim limitation “selectively offering” is alleged to be in the rejection of claim 24

With regard to claim 24, it is unclear how the claim limitation “selectively offering” is alleged to be in. The rejection cites Russel et al.’s provide a tool that allows users to elect to send flowers. On its face, this is the epitome of a non-selective offer. The Examiner’s reasoning for considering this to be a selective offer has been left out of the rejection.

Rejection of claim 7

Claim 7 is dependent from claim 1, but appears to have been rejected based solely on an actual funeral. The rejection is based on an assertion that it would be obvious to bring a laptop to a funeral service and use the Mytribute.com website at the funeral service. The rejection fails to state how various elements inherited from claim 1 would be met in this hypothetical case. For example, the rejection does state how the

- Examiner claims the limitation “offering persons selected based on their attendance of that service” is alleged to be met in the case that forms the basis for the rejection.

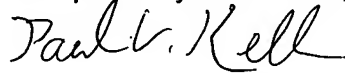
It is unclear why the Examiner is maintaining the 35 USC § 101 rejection of claim 17-18

Claim 17 and 18 were rejected on the grounds that a display “could have seen printed ad on paper or printed matter.” Office action page 8. In responding to the first Office action, the Applicant argued that a funeral register is by definition functional. The Examiner responded: “The ‘functional quality’ Applicant describes won’t make the claim statutory.” The Office action lacks the reasoning underlying this conclusory statement. It is also unclear where the phrase “functional quality” arose from or what distinction the Office draws between a function and a “functional quality.”

CONCLUSION

With this submission, the Applicant calls to the Office’s attention errors in the preceding Office action and requests that the Office correct these errors. These errors affect the Applicant’s ability to reply. Applicant requests a new time period for reply as provided by M.P.E.P. § 710.06.

Respectfully submitted,



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